CONTRIBUTION AMONG WRONGDOERS. — Where several persons are jointly liable and one makes a payment discharging the liability of all, he generally gets a right to contribution against his co-obligors. It has commonly been said, however, that this is not true between wrongdoers. Yet to such a broad statement there are admittedly many exceptions, — so many in fact that some courts have been led to declare that it can no longer be stated as a general rule.[1] For example, it is well recognized that among those who are wrongdoers merely by construction of law there may be contribution. Thus, where under the doctrine of *respondeat superior* joint employers of a tortfeasor become liable for his acts, contribution is permitted if they are morally innocent.[2] The same is true where several parties under an honest mistake as to title levy upon property belonging apparently to their debtor.[3] Again, where recovery for a negligent tort is based upon failure to perform a duty imposed by a joint undertaking, the party paying all the damages may recover half from the other.[4] In one case at least this rule has been extended to negligent torts in general.[5]

Wherever contribution is enforced the right rests not on a presumed arrangement between the parties, but on a recognition that as between them it is just that the burden be borne by those who have shared the benefit.[6] In the above cases the obligation arises from the benefit received in the discharge of liability. Such a benefit exists wherever one joint tortfeasor discharges the liability of all. As between one wrongdoer and another, contribution is as equitable between wrongdoers as between any other joint obligors. Although this has been recognized in several cases,[7] there has been a widespread failure to do so. It is therefore gratifying to note the emphatic language recently used by the New York Court of Appeals in the case of *Kolb* v. *The National Surety Company*, 176 N. Y. 233. "The legal principle upon which contribution among those jointly indebted rests, is as just where wrongdoers are concerned as in other cases where it is allowed, and the refusal of a court to entertain an action to compel it is based upon considerations of the nature of the complainant's liability and the association of the parties who incurred it."

As just indicated, although contribution may be equitable, it does not follow that a court will entertain an action to enforce it. Where the conduct of the party asking relief was intentionally unlawful or morally wrong, the interests of the community demand as a measure of protection that the loss lie where the injured party has seen fit to place it.[8] Otherwise the joint commission of torts would be encouraged. Where, however, as in the cases above mentioned, there has been no joint undertaking to commit a tort and the parties have not been engaged in an act immoral or intentionally unlawful, contribution should properly be permitted. Public policy does not seem to require that one who is liable for a tort should never be able to shift the burden of his liability. This is the reasoning which leads to the enforcement of express contracts under such circumstances. Otherwise it

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1 Goldsborough *v.* Darst, 9 Ill. App. 205; Bailey *v.* Bussing, 28 Conn. 455.
2 Woolley *v.* Batte, 2 C. & P. 417; Horbach *v.* Elder, 18 Pa. St. 33.
3 Acheson *v.* Miller, 2 Oh. St. 203.
4 Armstrong County *v.* Clarion County, 66 Pa. St. 218.
5 Palmer *v.* Wick, etc., Co., [1894] A. C. 318. See Thweatt *v.* Jones, 1 Rand. (Va.) 328.
6 Dering *v.* Earl of Winchelsea, 1 Cox 318.
7 Sely *v.* Unna, 6 Wall. (U. S.) 327.
8 See 12 HARV. L. REV. 176.

would be impossible to enforce bonds of indemnity or the innumerable contracts of employers insuring against liability for the negligence of their employees. The line which is drawn in such cases would seem to afford a practical test. Where such a contract would be valid, contribution should be enforced. But if under the circumstances a contract to share liability would be regarded as against public policy, an exception should be made to the general rule of contribution.

PRESCRIPTION IN INTERNATIONAL LAW. — A question that finds little discussion in decided cases or arbitrations is whether one sovereign state can acquire the territory of another by prescription. Nevertheless, the great majority of writers on international law,[1] a number of international arbitrations,[2] and at least three cases in the United States Supreme Court[3] have recognized the existence of an international doctrine of prescription.

It has, however, been contended that a doctrine of international prescription is inconsistent with the principle, "*nullum tempus occurrit regi.*"[4] A satisfactory answer would seem to be that this principle applies only as between individuals and the sovereign. While a state may impose such a rule upon its subjects, as between conflicting sovereign states one state cannot of its own accord impose a limitation upon another that can be effectual where its sovereignty is disputed. It has also been objected that one of the necessary elements of municipal prescription is absent between nations — a tribunal to which controversies may be submitted by aggrieved claimants before the title by prescription accrues.[5] The answer is that if that element is necessary it will be found in the willingness of the nations to abide by international principles, just as in any other international controversy. To deny that such a controversy can find a mode of settlement is to deny that any international dispute can be legally settled; which is to undermine the whole theory of an international law.

The recognition of the doctrine of prescription between nations seems not unnatural in view of its universal application in the municipal law of the civilized countries of the world. Most of the reasons for the latter may be argued in favor of the former. Long exercise of sovereignty naturally affects in an important measure the territorial conditions. Private acquisition of property rights and habits of living accommodate themselves to the existing jurisdiction and a disturbance of those conditions would be subversive of innocent private interests. Lapse of time produces a maze of uncertainty as to actual territorial rights, and if extended user did not fix beyond question the multiform relations incident to sovereignty, repose would be sacrificed without a corresponding benefit. No reasonable settlement of rights could be reached after a lapse of years. The most imposing array of evidence means nothing, since it is quite probable that decisive counter evidence has been lost. It is for that reason that prescription should be deemed conclusive. To object that sovereign rights will thus be arbitrarily

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[1] See Creasy's First Platform of International Law, 250.

[2] Williams *v.* Venezuela, 4 Moore, Int. Arb. 4181; Mossman *v.* Mexico, *ibid.* 4180; Barberie *v.* Venezuela, *ibid.* 4199; see also the rule submitted to the British-Venezuelan Tribunal of Arbitration, 5 *ibid.* 5018 (a).

[3] Rhode Island *v.* Massachusetts, 4 How. (U. S.) 591, 638; Indiana *v.* Kentucky, 136 U. S. 479, 509; Virginia *v.* Tennessee, 148 U. S. 503, 52

[4] Indiana *v.* Kentucky, *supra*, 500.

[5] See Pomeroy, International Law 126.